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# SPEECH OF MR. DIX OF NEW YORK,

ON THE

## RESOLUTION GIVING THE TWELVE MONTHS' NOTICE FOR THE TERMINATION OF THE JOINT OCCUPANCY OF THE OREGON TERRITORY.

DELIVERED IN THE SENATE OF THE UNITED STATES, FEBRUARY 18 & 19, 1846.

Mr. DIX rose and proceeded to address the Senate on the special order of the day. He said:

In entering into the debate on the question under consideration, I feel constrained to differ in opinion with two distinguished senators who have preceded me, in relation to the manner in which the discussion should be conducted. I allude to the senator from Ohio, [Mr. ALLEN,] who opened the debate, and the senator from Delaware, [Mr. CLAYTON,] who followed him. Both took the ground, and with equally strong language, that the title to Oregon ought not to be drawn into this discussion, but for totally different reasons—the senator from Ohio, because the time for discussing it had gone by, and the senator from Delaware, because the time for discussing it had not arrived. With the unfeigned respect which I entertain for both senators, I dissent from their opinions with great disidence of my own. But I am constrained to regard the question of our rights in Oregon, as one on which the propriety of the measures proposed peculiarly and eminently depends. What is the proposition before the Senate? It is to give to Great Britain the notice of twelve months, by virtue of which the treaty between her and the United States, stipulating that the territory of Oregon shall be free and open to the people of both countries, is to be abrogated and annulled. We cannot disguise the fact, that this is a measure of the most decided character, and involving the most important consequences. What is it, sir, but a declaration that the territory of Oregon, after the expiration of twelve months, shall no longer be open to the subjects of Great Britain? It is the first step towards the assertion of our right of empire and domain in Oregon. I can see it in no other light. I shall support it. But I cannot assent to the propriety of adopting a measure of such magnitude without saying a single word in illustration of our title to the territory, over which we are thus preparing to assert our paramount rights. I do not feel at liberty to take such a step, denying summarily all right in others, or abstaining from the assertion of any right in ourselves.

I propose, therefore, as a preliminary of action on my own part, to look at our title to Oregon—not for the purpose of defining it with critical precision, but so far as to state the general grounds on which it rests. And I am disposed to take this course, not only with a view to justify the vote I intend to give, but for the further purpose of correcting extreme misconceptions, both at home and abroad, on a few points of vital consequence. No purely American question has, perhaps, excited a stronger interest in other countries; and I doubt whether any other has been so greatly misrepresented. The same misapprehensions exist at home. The public press, for the last few weeks, has been teeming with essays disparaging the Spanish title, on which our own, in some degree, rests. I am unwilling either to pass by these statements in silence, or to meet them with summary declarations of right. It is natural that senators, who have been long on this floor, and who have already borne a part in the discussion of this question, should feel differently. But for myself, having never

even listened to a debate on the subject—a subject until recently entirely new to me—I feel bound to state the grounds on which I act. This is what I propose to do—not by the analysis of any particular treatise, or by the examination of any particular view of the subject—but by exhibiting some of the historical facts on which the Spanish title and our own rest. I shall endeavor to perform this duty in the plainest manner, adhering rigidly to the subject, and, if possible, without addressing a single word to prejudice or passion.

The region which now constitutes the territory of Oregon was seen, and a part of its coast reconnoitred—I will not say explored—half a century after the discovery of America. In consequence of its remoteness from the course of trade which was opened by the voyages of Columbus, the supposed rigor of its climate, and the certainty derived from the expeditions sent out from Mexico, that it contained no sources of wealth like those by which Spain had been enriched in the more southern portions of this continent, it remained, for more than two centaries and a half, without any permanent settlement by civilized men. During this long period, Spain constantly asserted her right of proprietorship in it by virtue of discovery, and had formed temporary establishments in its neighborhood from time to time. During the half century which succeeded, it was frequently visited by ships of other nations, by accident, for purposes of exploration, or for objects of commerce, and thus there arose a number of claimants to the right of sovereignty and domain. The claims of Russia have been adjusted with Great Britain. She holds, by the acquiescence of the latter, the whole northwest coast of America north of latitude  $54^{\circ} 40'$ , as far back as the first range of highlands; and by virtue of a convention with the United States, we have agreed to form no settlements north of that parallel. The southern line of Oregon we hold to be fixed, by the settlement of the boundary line between the United States and Mexico, at  $42^{\circ}$ . The territory in dispute has, therefore, a coast of twelve parallelis and two-thirds of latitude, running back into the interior to the Rocky mountains; and the United States and Great Britain are the only claimants to the right of proprietorship in it.

Before I proceed to examine their respective claims, it may be proper as the subject has been referred to on this floor, briefly to state the conditions, under which, by the usage of nations, a right of property in lands uninhabited, or occupied by wandering tribes, may be acquired.

The basis usually relied on to support a right of this nature is discovery; but it is a ground of right which becomes untenable, unless followed by an actual occupation of the discovered territory. If a title is not perfected by occupation, a second discoverer may appropriate the territory thus neglected by the first. But this must be upon reasonable evidence of the intention of the first discoverer not to take possession of it. If a second discoverer were to seize upon and appropriate the discovered territory, before the first had time to form an estab-

lishment within it, such an act of interference would be regarded as an unwarrantable intrusion, which the latter might justly resist. On the other hand, if the first discoverer neglects within a reasonable time to take actual possession of, to form settlements in, or make some actual use of, the regions he has discovered, the law of nations will not acknowledge in him any absolute right of property in or sovereignty over it, even though he may have set up monuments or memorials of his discovery at the time it was made. Such is the spirit of the rules in relation to the discovery and occupation of uninhabited territory, stated by writers on international law. It is certainly not easy to lay down any invariable rule in respect to the time within which, or the circumstances under which, a title by discovery must be perfected by occupation. The rules and maxims of international law are but a practical application of the principles of universal equity and justice; and in the settlement of questions of this nature, the real objects and intentions of the parties are to be sought for in a reasonable interpretation of their acts. I believe, however, the doctrine may be considered fairly inferrible from the whole body of the law on this subject, that rights by discovery are good until superseded by rights of occupation. With regard to Great Britain I believe I may safely say that her practical rule pushes this doctrine farther. She resists all attempts by others to acquire rights of occupation in territories which she has discovered, and thus renders her own rights by discovery perpetual. She discovered the Chatham islands in 1791 by Lieut. Broughton, in the armed tender Chatham, after parting company with Vancouver on their way to the northwest coast.\* She has not occupied them until recently; and I am not sure that there is now anything more than a whaling establishment on them; but she insists that no other power shall occupy them, because it would be injurious to her settlements in New Zealand, which are nearly five hundred miles distant from them.

I propose now to see what acts have been performed in respect to Oregon by different nations; or, in other words, to examine the nature of the discoveries which have been made, and the establishments which have been formed in that region, applying to them as I proceed the principles I have concisely stated.

The first discoverer of any part of the northwest coast of America north of, or in immediate contiguity, with the boundary between us and Mexico, was Ferrelo. He was the pilot of Cabrillo, the commander of an expedition fitted out in Mexico in 1543, fifty-one years after the discovery of San Domingo by Columbus. Cabrillo died on the voyage, and Ferrelo succeeded to the command. He examined the coast from the Santa Barbara islands, in latitude  $34^{\circ}$  to the  $43^{\circ}$  parallel of latitude, but the latter part of his voyage was made, I believe, without landing, and by a mere inspection of the coast from his vessel. In 1535, eight years before this exploration was made, possession had been taken of California by Fernando Cortes, in the name of Spain, and an establishment had been formed in  $24^{\circ}$  of north latitude. This establishment was kept up for several years; and the gulf of California to its northern extremity, with the western coast as high as  $35^{\circ}$  north latitude, had been explored. These explorations, and the establishments formed in carrying them on, were all made in pursuance of a settled purpose on the part of Spain to extend her dominion over the uninhabited territory on the northwestern coast of America. The discoveries to which these explorations led were therefore not accidental. The expeditions

were fitted out for the single object referred to. In the prosecution of this design, it is true, the most arrogant and absurd pretensions were set up by Spain in respect to the exclusive navigation of the Pacific; but these must not be permitted to prejudice her just claims to portions of the continent washed by its waters on the ground of discovery and occupation, and the declared purposes she had in view.

The next navigator who appeared on the northwest coast was Sir Francis Drake. He left England in 1577, on a predatory expedition against the dominions of Spain in the Pacific. In 1579, after having accomplished his object, and carried devastation and terror into the unprotected Spanish settlements on the coast, he landed in  $38^{\circ}$  north latitude, in a bay supposed to be that of San Francisco, and passed five weeks in repairing his vessel. He took possession of the country and called it New Albion. It is pretended that Sir Francis Drake followed the coast as far north as  $48^{\circ}$ ; but the best authorities fix the northerly limit of his examination, which was a mere inspection from his vessel, at  $43^{\circ}$ , the supposed boundary of Ferrelo's inspection more than a quarter of a century before. As the British negotiators have abandoned Drake's expedition as a part of the basis of their claim, I will not dwell upon it excepting to add that his examinations were accidental; they were not made in pursuance of any purpose of exploration or settlement; they led to the discovery of no new territory; and they were not followed up by an actual occupation of the soil. For two centuries no claim that I am aware of was set up by Great Britain on the ground of Drake's pretended discoveries.

The next explorer was the Greek pilot, Juan de Fuca, who was sent to the northwest coast in 1592, thirteen years after Drake, by the viceroy of Mexico, for the purpose of discovering the imaginary strait of Anian, supposed, at that day, to connect the north Pacific with the north Atlantic ocean. In the prosecution of his voyage he entered an extensive inlet from the sea, as he supposed, between the  $47^{\circ}$  and  $48^{\circ}$  parallels of latitude, and sailed more than twenty days in it. Such is his own account as detailed by Michael Lock; and it accords, as well as his descriptions, so nearly with the actual nature of the localities, that it is now generally conceded that it is substantially true; and his name is conferred by universal consent on the strait between the  $48^{\circ}$  and  $49^{\circ}$  parallels of latitude. Spain had thus made discoveries on the northwest coast before the close of the 16th century as far north at least as the  $48^{\circ}$  degree of latitude, and the nature of her explorations, from their extent and the settled purpose in pursuance of which they were made, excludes all claim of discovery by others down to that period of time.

In 1603, Vizcaino, a distinguished naval commander, under an order from the king of Spain, made a careful survey of the coast of California to Monterey, in the  $37^{\circ}$  parallel of latitude; and he also explored the coast as far north as the  $43^{\circ}$  parallel, giving names to several bays and promontories as he advanced. During the seventeenth century, at least seven different attempts were made by the Spaniards to form establishments in California; but, from the hostility of the natives, and other causes, these attempts failed, so far as any permanent settlement is concerned, excepting the last, which was made in 1697. But, within sixty years from this time, sixteen principal establishments were formed by the Jesuits on the western coast of America, between the Gulf of California and cape Mendocin,

\*See Vancouver's Journal, Book 1, chap. 2.

one of which was in the bay of St. Francisco, near the 38th degree of latitude. During the whole period from the landing of Fernando Cortes in California, and the latter part of the eighteenth century, Spain had uniformly asserted her title to the northwest coast of America, and had from time to time made efforts not only to extend her discoveries there, but to perfect her right of empire and domain by permanent establishments.

In 1774, Perez was ordered by the viceroy of Mexico to proceed to  $60^{\circ}$  north latitude, and explore the coast south to Monterey, and to take possession, in the name of the king of Spain, of the places where he should land. He succeeded in reaching the 54th parallel, within two-thirds of a degree of the northern boundary of the disputed territory, whence he returned along the coast to Washington's island, as it was called by Capt. Gray, or Queen Charlotte's island, as it was afterwards named by the British navigators. In latitude  $49^{\circ} 30'$  he entered a capacious bay, where he remained for some time, trading with the natives—the same bay, beyond all question, which was four years afterwards called King George's sound by Capt. Cook, and is now known as Nootka sound.

The next year, (1775,) Heceta sailed as far north as the 48th degree of latitude, and explored the coast south, filling up the outline which Perez had left incomplete. He had previously landed at  $41^{\circ} 10'$ , and erected a cross with an inscription setting forth that he had taken possession of the country in the name of his sovereign. In latitude  $46^{\circ} 17'$  he discovered a rapid current outward from the land, opposite to an opening, which he immediately pronounced to be the mouth of a river. From him it was first called the Entrada de Heceta, and afterwards the river St. Roc. He made repeated attempts to enter it, but was constantly baffled by the violence of the current. This is now conceded to have been the mouth of the river Columbia, which was discovered and entered by Capt. Gray, of Boston.

During the same year the coast was also explored from the 56th to the 59th degree of latitude by Quadra (y Bodega) and Maurelle, who erected crosses in testimony of their discoveries. On their return, they visited the coast at the 47th degree of latitude, and explored it from the 45th southwardly to the 42d.

It will be perceived by these details, which I have deemed it necessary to state with some particularity, that previous to 1778, the year in which Captain Cook visited the northwest coast, the Spaniards had examined it with great care and perseverance from  $37^{\circ}$  to  $49^{\circ} 30'$ . They had also examined it from the 54th to the 59th parallels, and visited it at intermediate points. And in these explorations they were wholly without competitors, excepting on the part of some Russian navigators, who had made discoveries north of the 56th parallel, and Drake, who had visited the coast at the 38th. During the two centuries which intervened from the expedition of Drake to the third voyage of Cook, no attempt had been made, nor any design indicated on the part of Great Britain, to avail herself of any pretended right by virtue of the transient visit of the former to the coast; while Spain constantly asserted her claim to it by virtue of previous and subsequent discoveries. And in California and its neighborhood she had, after repeated efforts, succeeded in effecting the permanent occupation of the country, which was her earnest object—an object which no other power during that long period had even in contemplation.

The third voyage of Captain Cook, undertaken

in 1777, gave the first indication of a desire on the part of Great Britain to appropriate such parts of the northwest coast of America as she considered open to settlement, and subject them to her dominion. He was instructed to take possession, in the name of the king, of convenient situations in the countries he might discover that had not been already discovered or visited by any other European power. In 1778 he landed at Nootka sound, in  $49^{\circ} 33'$  north latitude, where he remained nearly a month trading with the natives and refitting his vessel. I believe this was the only point within the territory in dispute at which Captain Cook landed; and it is proved by its latitude to be the same bay which Perez discovered four years before, and in which he passed some time, like Captain Cook, trading with the natives. The subsequent explorations of the latter were made further north, (I believe he did not see the coast south of  $55^{\circ}$ ,) with a view to the discovery of a passage between the Pacific and Atlantic oceans, and they have no bearing on the question under discussion.

The explorations of Captain Cook gave no title whatever to Great Britain on the score of discovery—the only place where he landed having been previously visited by Perez. Besides, if she had gained a contingent right of possession by virtue of his explorations, she did not proceed to perfect her title by a formal occupancy. The neglect of Great Britain to take actual possession of Nootka sound, even if she had gained a contingent right by discovery, is conclusive against any claim on her part to a right of property in it. For eight or nine years the British flag was not once unfurled there, as I can learn, although the place had, in the mean time, been visited by navigators of other nations; and it was not until several years later still that it was even entered by a public armed vessel of Great Britain; and then not until the Spanish government had taken formal possession of it.

In 1787, Berkeley, an Englishman, in the service of the Austrian East India Company, saw the strait of Juan de Fuca, but without attempting to enter it. In like manner, Meares, a lieutenant in the British navy, though in the service of a Portuguese merchant, and sailing under the flag of Portugal, sent a boat a few miles into the strait in 1788, having learned from Berkeley that he had re-discovered it the preceding year. Meares also explored the coast in the vicinity of the mouth of the Columbia river, and came to the conclusion, to use his own language, that "no such river as that of St. Roc exists, as laid down in the Spanish charts."—*Voyag. s, &c., John Meares, esq., page 168.*

As the transactions, in which Meares was engaged, on the northwest coast, are intimately connected with the claim of Great Britain to a right of joint occupancy in respect to Oregon, I trust it will not be deemed superfluous if I examine them somewhat in detail.

Before making the explorations above referred to, Meares had landed at Nootka sound, and left a party to build a small vessel. He had for a trifling consideration obtained the grant of "a spot of ground" from Maquinna, the king of the surrounding country, to build a house for the accommodation of the party. The occupation was avowedly for a temporary purpose, and he had stipulated with Maquinna to restore the possession to him, when he (Meares) should finally leave the coast.\* In the autumn of

\* Maquinna had not only most readily consented to grant us a spot of ground in his territory, wherein a house might be built for the accommodation of the people we intended to leave there, but had promised us also his assist-

the same year he left Nootka sound with his vessels, one of which wintered in China, and the two others in the Sandwich islands. I should have before observed that he arrived at Nootka sound with two vessels, the Felice and the Iphigenia; and the third, the Northwest America, was built there during the summer. In the meantime the Columbia and the Washington, two American vessels from Boston, entered the sound and passed the winter; and from all the testimony relating to the subject, there is no doubt that the lot occupied by Meares was abandoned or restored to Maquinna in pursuance of the agreement between them. During all this time, it is to be recollectcd, Meares was sailing under the Portuguese flag; and it is a curious fact, that he carried with him instructions to repel by force any attempt on the part of Russian, Spanish, or English vessels to seize him, or carry him out of his way. He was further instructed, in case he was successful in capturing his assailant, to send the vessel to China to be condemned, and the crew to be tried as pirates; and yet, sir, notwithstanding he was sailing under a foreign flag, with orders to treat his Britannic majesty's subjects as pirates in case they molested him, the British government does not scruple to found its title to Oregon on his voyage.

Though the vessels of Meares sailed under the Portuguese flag, and under the name of a Portuguese subject, he asserted in his memorial that the parties in interest were British merchants. I desire to state the whole truth, and therefore I give a fact I have not seen noticed. At page 173 of his voyages it will be seen that he took possession of the straits of Juan de Fuca, in the name of the king of Great Britain, in July, 1788. But independently of the objection to claims founded upon the transactions of an individual, who, under the most favorable view that can be taken of him, had sought the protection of a foreign flag to perpetrate frauds on the revenue laws of China, this unauthorized act of taking possession under such a flag was preceded many years by similar formalities on the part of the Spanish navigators, under express orders from their sovereign. The two-fold character which Meares united in his person, certainly gave him manifest advantages, both as a trader and a discoverer. He was a Portuguese captain when defrauding the revenue laws of China for the benefit of British subjects, and a British lieutenant when encroaching on the territorial rights of Spain for the benefit of the British sovereign.

On the 6th of May, 1789, Martinez, a Spanish naval commander, with two public armed vessels, entered Nootka sound, with instructions to assert and maintain the paramount rights of Spain to the place, and to the adjacent coasts. The Iphigenia, and the Northwest America, two of Meares's vessels had returned from the Sandwich islands, still sailing under Portuguese colors, and arrived in the sound, on the 20th of April, sixteen days before Martinez. The Northwest America sailed eight days afterwards on a trading voyage, and the Iphigenia was a short time subsequently seized by Martinez, on the ground that her instruc-

ance in forwarding our works, and his protection of the party, who were destined to remain at Nootka during our absence."—*Voyages, &c.*, by John Meares, page 114.

"The chd was also requested to show every mark of attention and friendship to the party we should leave on shore; and as a bribe to secure his attachment, he was promised that when we finally left the coast, he should enter into full possession of the house, and all the goods and chattels thereunto belonging."—ib., page 133.

\*Appendix to Meares's Voyages, Papers No. 1.

tions were hostile to Spain. She was, however, soon restored, and continued to trade under Portuguese colors—a fact which shows conclusively that no claim can justly be set up by Great Britain on the basis of his voyage to Nootka, and his temporary establishment there. The Northwest America was also seized, for reasons not directly connected with any question of sovereignty, and was employed for nearly two years in the Spanish service.

In the month of June, 1789, two vessels, the Argonaut and Princess Royal, sailing under British colors, arrived at Nootka, and were seized by Martinez. It is unnecessary to enter into the details of this transaction. It is sufficient to say that it led to an animated discussion between the governments of Great Britain and Spain, in respect to their rights in the Pacific, and the western coast of America, which for several months threatened to produce a war between the two countries, but which was finally terminated in October, 1790, by the treaty of the Escorial, or the Nootka Sound convention, as it is more frequently denominated with us. Before the negotiations were concluded, both vessels were voluntarily released by the Spanish authorities in Mexico.

As the Nootka Sound convention constitutes an essential ingredient in the claim of Great Britain, it will be necessary to advert to such of its provisions as are made the foundation of her title to the qualified exercise of sovereignty which she asserts over the northwest coast of America, and to consider them in connexion with the circumstances under which they were framed. The articles which relate particularly to the question under discussion, are the 1st, 3d, 5th, and 6th.

The 1st article provides that the "the buildings and tracts of land situated on the northwest coast of the continent of North America, or on the islands adjacent to that continent, of which the subjects of his Britannic majesty were dispossessed about the month of April, 1789, by a Spanish officer, shall be restored to the said British subjects."

The 3d article provides that, "in order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific ocean, or in the South seas, or in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there; the whole subject, nevertheless, to the restrictions specified in the three following articles."

The 5th article provides that "as well in the places which are to be restored to the British subjects by virtue of the first article, as in all other parts of the northwestern coasts of America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation."

The 6th article relates to the coast of South America; but it has an importance in containing a definition of the erections which may be made, confining them to such as may serve the purposes of fishing; and the provisions of the third article are expressly declared to be subject to the restrictions in "the three following articles," one of which is the 6th.

I now proceed to state certain facts in respect

to this convention, and to draw from them conclusions at which I have arrived with some diffidence. The facts I shall endeavor to present with a rigid regard to accuracy. If my conclusions are erroneous, the better judgment of the Senate will correct them; and I shall have the consolation of reflecting that my errors—if they shall prove such—have led to the discovery of truth, which I am sure is the great object of every senator on this floor.

The first article was practically inoperative, from a total misapprehension of the facts which it supposed. There is no evidence that subjects of his Britannic majesty had been dispossessed of buildings or tracts of lands in April, 1789, or at any other time, by a Spanish officer. In the message of the British king to Parliament, and in the earnest discussions between the two countries in respect to the seizure of the British ships, no mention is made of such dispossession. When Vancouver was sent out, in 1792, to receive possession of the buildings, &c., to be restored, none could be found excepting those erected by the Spaniards. No building occupied by British subjects remained at Nootka in 1789, when Martinez arrived there; and it was denied by the Indians that any tracts of land had been ceded to British subjects. In fact, there were no traces of the occupancy which the article supposed. The only pretence of a cession of territory of which there was any evidence, was the right acquired by Mearns, while acting in the name of a Portuguese citizen, and sailing under the flag of Portugal, to occupy temporarily a very small lot, which he himself admits he had agreed to restore when he should leave the coast.

After a long controversy on the subject between Vancouver and Quadra, the Spanish commander at Nootka, the former departed without receiving any restitution of buildings or lands, and the subject was referred to their respective governments. In 1796, Capt. Broughton arrived at Nootka, and found the place unoccupied. (See his *Voyage of Discovery to the north Pacific Ocean*, page 50.) He nowhere states that he was sent out with instructions to adjust the difficulty. But he says he was informed by letters left with Maquinna, the Indian king, that "the Spaniards had delivered up the port of Nootka, &c., to Lieutenant Pierce, of the marines, agreeably to the mode of restitution settled between the two courts." But there is no proof of such restitution. The only authority relied on to show such a restitution, is one recently produced by the London Times. I allude to De Koch, vol. 4, page 126. He says:

"The execution of the convention of the 28th October, 1790" [the Nootka convention] "experienced some difficulties which delayed it till 1795. They were terminated the 23d of March of that year, on the spot itself, by the Spanish Brigadier Alava and the English Lieutenant Poara, who exchanged declarations in the bay of Nootka; after which the Spanish fort was destroyed, the Spaniards embarked, and the English flag was planted there in sign of possession."

De Koch has the reputation of being accurate. But there is certainly one error in his statement. There was no such name as Poara in the British registers of that year. He doubtless meant Pierce.

In opposition to this testimony of a foreign

writer, we have the assertion, twice repeated, of the British historian, Belsham, that the Spanish flag at Nootka was never struck, and that the place was virtually relinquished by Great Britain. If any restitution was ever made, the evidence must be in the possession of Great Britain. Signor Quadra in 1792 offered to give Vancouver possession, reserving the rights of sovereignty which Spain possessed. There may have been a restitution with such reservation; but, if there is any evidence of a restitution, why has it not been produced by the British negotiators, or at least referred to? Where are the declarations mentioned by De Koch as having been exchanged? Why has the evidence never been produced? Probably because, if there is any such evidence, it must prove a conditional and not an absolute surrender—such a surrender as she is unwilling to show—a surrender reserving to Spain her rights of sovereignty. If there was a restitution, and she possesses the evidence of it, she probably secretes it, as she secreted the map of the northeastern territory with the red line, because it would have been a witness against her. When Vancouver went out in 1792, he carried an order from the Spanish government to the commander at the Port of Saint Lawrence (Nootka) to restore the buildings and districts or parcels of land which were "occupied" by the subjects of Great Britain at Nootka and Port Cox, and of "which the English subjects were dispossessed." Quadra refused to execute it. No occupation—no dispossession was proved. The treaty did not name Nootka or Port Cox. Quadra considered, doubtless, the occupation and dispossessing as facts to be shown. The execution of the treaty, though absolute in its terms, depended on a contingency assumed to have happened—a contingency to be shown. In the absence of any such proof, we have a right to insist on the evidence of a restitution, full, formal, unconditional, absolute. Broughton, in 1796, says the restitution was made agreeably to the mode "settled between the two courts." This was a mode settled on the reference of the subject to the two governments after the refusal of Quadra to surrender Nootka, Vancouver, in his journal, vol. 6, page 118, says, that on the 12th September, 1794, Senor Alava told him at Monterey that the matter had been adjusted by their respective courts "nearly on the terms" which he (Vancouver) had repeatedly offered to Quadra. Even this statement, coming from Vancouver, shows that there was a new agreement between the courts. What was the agreement? We have a right to call for its production.

Such was the practical execution of the first article of the Nootka Sound convention. One fact is undeni-

"It is certain, nevertheless, from the most authentic subsequent information, that the Spanish flag flying at the fort and settlement of Nootka was never struck, and that the whole territory has been virtually relinquished by Great Britain—a measure, however politically expedient, which involves in it a severe reflection upon the minister who could permit so insidious an encroachment upon the ancient and acknowledged rights of the crown of Spain."—Belsham's *History of Great Britain*, vol. 8, page 337-38.

"But though England, at the expense of three millions, extorted from the Spaniards a promise of restoration and reparation, it is well ascertained, *first*, that the settlement in question never was restored by Spain, nor the Spanish flag at Nootka ever struck; and, *secondly*, that no settlement has ever been subsequently attempted by England on the California coast. The claim of right set up by the court of London, it is therefore plain, has been virtually abandoned, notwithstanding the menacing tone in which the negotiation was conducted by the British administration, who can not escape some censure for encouraging those vexatious encroachments on the territorial rights of Spain?"—Belsham's *History of Great Britain*, vol. 8, Appendix, page 40-41.

\*See *Histoire Abregee des Traites de Paix, &c. par M. de Koch*, continue, &c. par E. Schoell; vol. iv, p. 126.

"L'exécution de la convention du 28 Octobre, 1790, éprouva, au reste, des difficultés qui la retardèrent jusqu'en 1795. Elles furent terminées le 23 Mars de cette année, sur les lieux mêmes, par le Brigadier Espagnol Alava, et le Lieutenant Anglois Poara, qui échangèrent des déclarations dans le golfe de Nootka même; après que le fort *Espaniol fut rose*, les *Espagnols s'embarrasserent*, et le pavillon *Anglais y fut planté en signe de possession.*"

able. Great Britain never occupied Nootka. From 1796 to the present day, no attempt has been made to reoccupy it by civilized men. Captain Belcher, a British naval officer, visited the place in 1837, while making a voyage round the world. In his narrative, page 113, vol. 1. he says :

"No vestige remains of the settlement noticed by Vancouver, nor could I discern on the site of the Spanish battery the slightest trace of stones employed for building. The chiefs pointed out where their houses stood, and where the potatoes grew, but not a trace remains of a European."

The third article, besides stipulating for an unmolested enjoyment of the right of navigating and fishing in the Pacific and South seas and landing on the coast, conceded in express terms to the subjects of both nations the right to form settlements in places not already occupied; but this right was subject to the restrictions of the "three following articles," one of which was to limit its exercise to the parts of the coast, or the islands adjacent, north of the parts already occupied by Spain. It had, by the terms of the compact, no application whatever to parts of the coast, of North America south of the places occupied by Spain at the time the treaty was made. The important question arises, what was the most northern point occupied by Spain in 1790? This became a matter of disagreement between the Spanish and British authorities at a very early day after the Nootka Sound convention was formed. Vancouver claimed not only the whole of Nootka sound, but also Port Cox, south of it; and he insisted, to use his own phraseology, that "the northernmost spot on the Pacific coast of America, occupied by the Spaniards previous to the month of May, 1789, was the Presidio of San Francisco, in latitude 37° 48'." Now, it will be observed that an attempt was made to give to the Nootka Sound convention a construction wholly unwarranted by its terms. Vancouver endeavored to fix the month of April, 1789, as the time when the question of the most northern occupation of Spain was to be settled. The language of the convention, in respect to the right of forming settlements, is "north of the parts of the said coast already occupied by Spain," fixing the time, according to every just rule of construction, at the date of the treaty, the 28th of October, 1790. This construction is strengthened by the fact that a subsequent article concedes the right of forming temporary establishments on the coast of South America, south of parts "already occupied" by Spain, and referring indisputably to the date of the treaty. The words "already occupied" are the same in both articles, and they must be considered as referring to the same period of time.

The question, then, recurs, what was the most northerly point occupied by Spain in October, 1790, at the conclusion of the treaty?

Martinez, as has been seen, took possession of Nootka sound on the 6th of May, 1789; and immediately landed materials and cannon for building and arming a fort on a small island, at the entrance of Friendly Cove. In November he returned to St. Blas, and in the spring of 1790, Capt Elissa took his place. A permanent establishment was formed; vessels were sent out on exploring expeditions; and during the negotiations between Vancouver and Quadra in 1792, the Spaniards were in possession of houses and cultivated lands Vancouver again found them in possession in 1793, under Senor Fidalgo, and in 1794, under Senor Saavdra, and the post was maintained without interruption until 1795. By turning to page 336,

volume 2, of Vancouver's Journal, a view of the Spanish establishment at Friendly Cove, on Nootka sound, will be seen, from a sketch taken on the spot by one of Vancouver's party, in September or October, 1792, and it exhibits ten roofed buildings, with several enclosures of cultivated land. It also exhibits, totally distinct from these lands and buildings, a cove adjoining, and a reference to it stating that it includes "the territories which, in September, 1792, were offered by Spain to be ceded to Great Britain." This was the site of the hut occupied by Meares, and the Spanish commander refused to make a formal and absolute surrender to Great Britain of any other land.

Thus it is established by proof not to be impeached, that the Spaniards were in the occupation of a post at Nootka sound in 1790, when the convention was negotiated and concluded; and I submit, therefore, whether this must not be regarded as the southern limit of the region, within which the right of forming settlements, recognised or conceded by the convention, was to be exercised. This point was strenuously and perseveringly insisted on by Quadra in his negotiation with Vancouver, and with obvious justice. To use Vancouver's own language, page 342, 2d volume of his Journal, Quadra observed that "Nootka ought to be the last or most northwardly Spanish settlement; that there the dividing line should be fixed, and that from thence to the northward should be free for entrance, use, and commerce to both parties, conformably with the fifth article of the convention; that establishments should not be formed without permission of the respective courts, and that the English should not pass to the south of Fuca." Such was Quadra's construction of the treaty, and he uniformly refused to make any formal surrender of territory or buildings, excepting the small cove referred to. Nootka sound is midway between the 49th and 50th parallels of latitude; and south of this point, if Quadra's position was well taken, Great Britain could claim no right by virtue of the convention, if it were still in force.

That Great Britain would have had the right, under the convention, at any time during its continuance, to form a temporary establishment on any part of the northwest coast, north of the Spanish post at Nootka, will not be disputed; though it would have been subject to the right of free access and trade reserved to the subjects of Spain. But she neglected to assert her right. She formed no settlements in pursuance of the convention; and, in 1796, Spain, by declaring war against her, put an end to the treaty, agreeably to the acknowledged principle of international law, that the permanence of treaty stipulations can only be secured by express agreement, and that without such an agreement they cease to

"An officer was immediately despatched on shore to acquaint Senor Fidalgo of our arrival, and that I would salute the fort if he would make an equal return: this was accordingly done with eleven guns."—Vancouver's Journal, vol. 3, page 422.

Vancouver arrived at Nootka sound on the 5th of October, 1793, and, to use his own words, "the usual ceremonies of salutes, and other formalities having passed, accompanied by Mr. Puget, I waited on Senor Saavdra, the commander of the post."—Vol. 4, page 289.

Vancouver arrived at Nootka sound on the 2d September, 1794, and found Brigadier General Alava in command. He left without resuming the negotiation which he had commenced with Quadra, in 1792. On the 12th November, 1794, he was informed by General Alava, at Monterey, where they met, that instructions had been sent to adjust the matter in an amicable way, and nearly on the terms, which he (Vancouver) had repeatedly offered to Senor Quadra in September, 1792. But of this, as has been seen, there is no satisfactory evidence. See 6th volume, page 65.

<sup>†</sup>Vancouver arrived at Nootka sound on the 20th May, 1793, and found the Spaniards in possession. He says:

be binding on the occurrence of hostilities between the contracting parties, unless there is something in the nature of the questions settled which is, of necessity, permanent and final. Having failed, then, to make any settlement on the coast from 1790 to 1796, all rights conceded by the convention ceased with the declaration of war, by which it was terminated. From that time forth, Great Britain stood in precisely the same relation to Spain as though the convention had never been formed; and in order to establish any claim she may advance to territorial rights on the northwest coast, she must resort to those general rules founded upon discovery and occupation which were briefly adverted to at the commencement of my remarks.

I will not discuss the question whether the treaty of the Escorial was revived by the treaty of Madrid, in 1814. I consider it put at rest by the able argument of the American negotiator. Mr. Buchanan.

Let me now revert to the progress of discovery and exploration, which I was briefly sketching, and which was interrupted by the events of the Nootka Sound controversy.

In 1789, the American sloop Washington, commanded by Capt. Gray, who afterwards discovered the Columbia river, entered and sailed fifty miles in the strait of Juan de Fuca. Meares, in his narrative, describes a voyage by the Washington entirely through the strait to the north of the islands of Quadra and Vancouver, and thence into the Pacific. If such a voyage was ever made, it must have been under Capt. Kendrick, who was, at another period, in the command of that vessel; for Gray, when he met Vancouver in 1792, said it was not made by him. But, be this as it may, it is certain that the Washington was the first vessel which penetrated the strait beyond its mouth after its discovery by De Fuca. A subsequent examination was made in 1790, as high as 50°, by order of the Spanish commander at Nootka sound; so that its shores were well known in their general outlines before the examinations made by Vancouver two years afterwards.

In 1792, Vancouver arrived on the northwest coast, with instructions to examine and survey the whole shore of the Pacific from the 35th to the 60th parallel of latitude, and particularly to examine "the supposed strait of Juan de Fuca," "through which the sloop Washington is reported to have passed in 1789, and to have come out again to the northward of Nootka." He passed the mouth of the Columbia river, which he considered as an opening deserving of "more attention," and came to the conclusion that, between the 40th and 48th parallels of latitude, the rivers which had been described "were reduced" (I use his own words) "to brooks insufficient for our vessels to navigate, or to bays inapplicable, as harbors, for refitting." On the 29th of April, he met Capt. Gray, in the ship Columbia, from Boston, and was informed by him that he had "been off the mouth of a river in the latitude of 46° 10', where the outset or reflux was so great as to prevent his entering for nine days." And Vancouver adds: "This was probably the opening passed by us on the forenoon of the 27th, and was apparently inaccessible, not from the current, but from the breakers that extended across it."—Vol. 2, page 43. Notwithstanding this communication by Gray, Vancouver, relying on his own examinations, still remained of the opinion (and he so records it) that, "if any inlet or river should be found, it must be a very intricate one, and inaccessible to vessels of our burden, owing to the reefs, broken water," &c.; and he concludes that he was "thoroughly con-

vinced" that he could "not possibly have passed any safe, navigable opening, harbor, or place of security for shipping on this coast, from Cape Mendocino to the promontory of Classet," the entrance of the strait of Fuca.—Vol. 2, pages 58 and 59.

Only eight days after parting with Vancouver, Gray discovered Bulfinch's harbor, between the mouth of the Columbia and the strait of Fuca, and remained three days in it. On the 11th May, 1792, the day after he left Bulfinch's harbor, he saw, to use his own words, "the entrance of our desired port," and in a few hours was anchored in, "a large river of fresh water," as he terms it, to which he gave the name of the Columbia. He remained in the river nine days, and sailed, as he states, more than twenty miles up the channel from the bar at its entrance. Thus was verified the conjecture of Heceta, who, seventeen years before, saw an opening in the coast, which on the Spanish maps was called the river St. Roc. Meares and Vancouver had asserted, in the most positive manner, their conviction that no such river existed; yet when the fact was clearly ascertained by Captain Gray, who had given copies of his charts to Quadra, the Spanish commander at Nootka, Vancouver having procured copies from the latter, sent Lieutenant Broughton to examine the river, and take formal possession of it. Broughton not only performed both these services, but, for the purpose of earning for himself the reputation of a discoverer, he labored, in his account of his expedition, to rob Captain Gray of the merit of discovering the river, by the unworthy device of drawing a distinction between the bay in which it debouches and the upper part of the stream. Public opinion has rejected this unmanly attempt; and Captain Gray is admitted by all fair-minded men to have been the first person who entered the river and solved the doubt which had long prevailed with regard to its existence, while Vancouver, twelve days before the discovery, had not hesitated to deny, on the strength of his own personal examination, made "under the most favorable circumstances of wind and weather," to use his own language, that no such great river existed. This attempt on the part of Broughton is the more unmanly, from the fact that he actually entered the mouth of the Columbia with the aid of Gray's chart. I am disposed to acquit Vancouver, in a great degree, from all participation in the odium of this act. The account of the examination of the Columbia by Broughton, contained in Vancouver's journal, though in the language of the latter, is, in fact, a report made by Broughton, the commander of the party, as may be seen by reference to the journal, volume 3, page 85. Vancouver more than once recognises Gray distinctly as the discoverer of the Columbia. At page 388, volume 2, he expresses the hope that he may be able, in his route to the southward, "to re-examine the coast of New Albion, and particularly a river and a harbor discovered by Mr. Gray in the Columbia, between the 46th and 47th degrees of north latitude, of which Señor Quadra had favored me with a sketch." At page 393, same volume, he says he directed that "Mr. Whidbey, taking one of the Discovery's boats, should proceed in the *Dædalus* to examine Gray's harbor, said to be situated in latitude 46° 53', whilst the *Chatham* and *Discovery* explored the river Mr. Gray had discovered in the latitude of 46° 10'."

The explorations of Vancouver, though they resulted in a minute and critical examination of the shores of the strait of Fuca; led to the discovery of no new territory; and it is a singular fact, that while this naval officer of Great Britain, himself

an accomplished navigator, furnished with all the means of making scientific investigations, was pursuing the examinations, which were the great purpose of his expedition, Captain Gray, in a trading vessel, and in the prosecution of commercial objects alone, discovered the only two important openings, the Columbia river and Bulfinch's harbor, on the northwest coast, from the 40th to the 48th parallel of latitude, where Vancouver, after the most critical survey, had discovered none.

It is indeed an extraordinary circumstance that the existence of all the great inlets in the coast, to which Great Britain now lays claim on the ground of discovery, was strenuously denied by the navigators in her public service, until those inlets were discovered and made known by others. We have seen what Vancouver said in relation to the coast between the 40th and 48th parallels of latitude. On the 22d of March, 1778, Captain Cook was in latitude  $48^{\circ} 15'$  inspecting the coast. The premonitory of Classet, (or Cape Flattery as he denominated it,) the southern cape at the entrance of the strait of Juan de Fuca, was in full view, and but a few miles distant. Hear what he says in relation to the strait:

"It is in this very latitude where we now were that geographers have placed the pretended strait of Juan de Fuca. But we saw nothing like it; nor is there the least probability that any such thing ever existed."—Cook's Third Voyage, volume 2, page 263.

Now, however, Great Britain claims the whole strait and the adjoining country by Vancouver's discovery, though he himself admits (as we shall see) that the Spaniards had surveyed and mapped a portion of it before he arrived on the northwest coast.

In the letter of the British plenipotentiary, Mr. Pakenham, of the 29th July last, the following passage will be found at page 67, documents accompanying the President's message:

"In 1792, Vancouver, who had been sent from England to witness the fulfilment of the above mentioned engagement, [the restitution of buildings, &c., at Nootka, which, as has already been seen, were not to be found] and to effect a survey of the northwest coast, departing from Nootka sound entered the straits of Fuca; and after an accurate survey of the coasts and inlets on both sides, discovered a passage northwards into the Pacific, by which he returned to Nootka, having thus circumnavigated the island which now bears his name. And here we have, as far as relates to Vancouver's island, as complete a case of discovery, exploration, and settlement as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of the island."

To repel this assumption, the grounds of which the distinguished British plenipotentiary appears not to have sufficiently investigated, Mr. Buchanan briefly referred to previous examinations by the Spaniards. I now proceed to show by Vancouver himself that the assumption is entirely unsustained by the facts.

In the first place, let me correct an error into which Mr. Pakenham has fallen at the outset, in saying that Vancouver, "departing from Nootka sound," surveyed the straits of Fuca, circumnavigated the island which bears his name, and then returned to Nootka. Sir, Vancouver had never seen Nootka sound when he surveyed the straits of Fuca. He entered the straits on the 23d of April, the evening of the day he met Capt. Gray, and proceeded immediately to survey them, as may be seen by his journal, vol. 2, pages 49 and 52. He arrived at Nootka, for the first time, on the 28th of August, four months afterwards—page 334 same volume. This correction is only important as repelling the inference which might have been drawn from the fact, if it had been as stated by Mr. Pakenham, that Vancouver had been previously established at Noot-

ka, and had departed from it as from a regular station on a voyage of exploration to the straits of Fuca.

But there are more important errors to be corrected.

While Vancouver was surveying the strait of Fuca, and the extensive inland waters connected with it Galiano and Valdes, two Spanish officers, sent out from Nootka sound, were engaged in the same service. The two parties met on the 22d of June, about the middle of the strait, near Point Grey, above Frazer's river, and proceeded together northerly, uniting their labors, and surveying its shores to a point near the extremity of the island of Quadra and Vancouver, between the 50th and the 51st degrees of north latitude, where they separated. And here I desire to call the special attention of the Senate to the Journal of Vancouver, who states that Señor Galiano, who spoke a little English, informed him "that they had arrived at Nootka on the 11th of April, from whence they had sailed on the 5th of this month, (June), "in order to complete the examination of this inlet, which had, in the preceding year, been partly surveyed by some Spanish officers, whose chart they produced." Observe, sir, the inlet (i. e. the strait of Fuca,) about latitude  $50^{\circ}$ , partly surveyed and mapped a year before Vancouver came on the coast. Vancouver then continues, (page 210, vol. 2.):

"I cannot avoid acknowledging that, on this occasion, I experienced no small degree of mortification in finding the external shores of the gulf had been visited, and already examined a few miles beyond where my researches during the excursion had extended, making the land I had been in doubt about an island; continuing nearly in the same direction about four leagues further than had been seen by us and by the Spaniards named Favidá, [Faveda.]"

By turning back to page 204, vol. 2, it will appear that Vancouver's examination terminated at  $56^{\circ} 6'$ , north latitude; so that the Spaniards, before his arrival, by his own acknowledgment, had examined the strait of Fuca to a point north of that parallel; and by turning to page 249, vol. 2, it will be seen that, on parting with Señor Galiano, the latter furnished him with "a copy of his survey and other particulars relative to the inlet of the sea, which contained also that part of the neighboring coast extending northwestward from the straits of De Fuca, beyond Nootka, to the latitude of  $50^{\circ} 3'$ , longitude  $23^{\circ} 48'$ ."

What, then, becomes of this complete "case of discovery, exploration, and settlement," in respect to Quadra and Vancouver's island, and the strait of Fuca? It is proved by Vancouver himself that the Spaniards had partially surveyed and mapped the shores of the strait as high as  $50^{\circ}$  a year before he arrived on the coast. And if we turn to his journal, vol. 2, page 339, it will be seen that Galiano and Valdes arrived at Nootka on the 1st of September, three days after him, by a "route through Queen Charlotte's sound" round the northern point of the island, "to the southward of that which we had navigated," and of course following its shores more closely than he. "The strongest possible claim to the exclusive possession of the island," to use Mr. Pakenham's language, is not, therefore, as he asserts, in Great Britain; but, as shown by Vancouver himself, it was in Spain then, and is in us now.

But, sir, I have a word to say in relation to the whole subject of Vancouver's exploration.

It would seem that the Spaniards, in the autumn of 1793, had become distrustful of Vancouver's objects in the survey of the northwest coast. At the bay of St. Francisco, although he had everywhere before been treated with a civility by the Spaniards, for which his journal abounds in expressions of gratitude, he was subjected to restrictions which he

denominates "unexpected, ungracious, and degrading." On his arrival at Monterey on the 1st of November the Spanish commander, Arrillaga, declined holding any verbal communication with him, but addressed to him questions in writing as to the objects of his voyage, to which Vancouver promptly replied, (page 309, vol. 4.)

"That the voyage in which we were engaged was for the general use and benefit of mankind, and that under these circumstances, we ought rather to be considered as laboring for the good of the world in general, than for the advantage of any particular sovereign, and that the court of Spain would be more early informed, and as much benefited by my labors as the kingdom of Great Britain."

Here is the confession of Vancouver himself, that there was no intention of interfering with the territorial rights of Spain, and that no special advantages were sought for by Great Britain. It is the highest evidence, the evidence of contemporaneous exposition, against the claims of the British plenipotentiary; and it demolishes the whole fabric of the British title, so far as it is built on Vancouver's explorations.

While on this part of the subject, I desire also to call the attention of the Senate to the manner in which the Oregon question has been discussed in the British Parliament by some of the most distinguished members of both branches of that body. I wish to do so for the purpose of correcting great inaccuracies, and also for the purpose of showing how imperfectly the subject appears to be understood by those who, from their elevated positions, are under the strongest moral obligations to possess themselves of the truth, in order that the public mind of Great Britain may not be misled and inflamed on their high authority.

In the House of Lords, on the 4th of April last, immediately after the reception of the President's inaugural speech, the subject was brought forward by the Earl of Clarendon, not in the usual form of a call on her Majesty's ministers for information, but in pursuance of a notice which he had given on the preceding day of his design to invite the attention of the House to the question. In the course of his remarks, he undertook to give a sketch of the claims of Great Britain and the United States to the territory of Oregon. I shall, in respect to the former, quote his own words from the London Times, a source to which we may confidently look for an accurate report of his lordship's remarks. I shall confine myself strictly to the question of title in all I have to say in reference to these debates, avoiding carefully all allusion to the offensive language with which they were in some instances connected:

"In the first place, my lords, if priority of discovery could constitute title, our claim would be unquestionable; for Sir F. Drake, when he first visited that country in 1578, found all the land unappropriated, and took possession of it, giving it the title of New Albion. I do not mean to say that this constitutes a claim, but owing, subsequently, to a seizure of British vessels at Nootka, and to a dispute which arose in consequence, it was arranged by the treaty of the Escorial that the subjects of the contracting parties should not be molested in fishing and making settlements in parts not hitherto occupied. In 1792, the country adjacent to the Columbia river was taken possession of by Conke, and was explored in 1813 by the Northwestern Company, now called the Hudson Bay Company, who established themselves in Port St. George, under the government of British laws, continuing to the present day, and being the first establishment in that country of a lawful and national character, and recognised as such by foreign states."

In the paragraph I have read there are numerous errors in the statement of facts, and I must ask the indulgence of the Senate while I point some of them out.

1. Sir Francis Drake arrived on the northwest coast of America in 1579, and not in 1558, as stated by Lord Clarendon, making a difference of twenty-one years in point of time. If this error of date,

which may possibly be typographical, were the only one, I should not have troubled the Senate with any reference to it. But there are graver misapprehensions in this statement. It will be seen, that though Lord Clarendon does not venture to refer to Sir Francis Drake's visit to the northwest coast as constituting a title of itself, he presents it as evidence of "priority of discovery." Sir, that navigator can, in no just sense, be said to have visited the disputed territory of which Lord Clarendon was speaking. The territory commences at the 42d parallel of latitude, and runs north to 54° 40'. Sir Francis Drake landed at 38°. He sailed along the coast north of this parallel, according to the best authorities only as high as 43°. Nor can his visit, in any just sense, be regarded as a discovery. The country including the bay of St. Francisco, where he landed, was previously known. It had been seen thirty years before as high as the 43d parallel by Ferrel, who was sent out by the viceroy of Mexico, for the express purpose of exploring and extending the dominion of Spain over it; and it was taken possession of at or near the very point where Drake landed, and at various others, long before the government of Great Britain claimed any right of possession, growing out of this pretended discovery, and the visits of her navigators to the northwest coast.

Besides, Drake's expedition was in the nature of a piratical enterprise, and not an enterprise of legitimate warfare. England and Spain were at peace. It is true, the two sovereigns, Elizabeth and Philip, were engaged in secret plots against each other—the former by fomenting disturbances in the Low Countries, and the latter by setting on foot rebellions in Ireland; but it was several years later before these intrigues broke out into the open hostility, of which the chief incident was the destruction of the invincible Armada. (Sir, the contradiction of terms is the work of history, not mine.) Yet Elizabeth, after Drake's return to England, on the application of the Spanish ambassador complaining of his piracies, restored a portion of the booty he had taken, and by this restitution admitted the unlawfulness of his expedition. It is only necessary to look into Hume to see in what light it has always been viewed by the eye of legitimate history. Sir, it should need some boldness, one would think, to set up a claim even to "priority of discovery" on the basis of a transaction like this!

2. Lord Clarendon states that the country adjacent to the Columbia river, was taken possession of in 1792 by Captain Cook. Sir, Captain Cook never saw the Columbia river, or landed in the immediately adjacent country. His visit was to Nootka sound, on the island of Quadra and Vancouver, separated from the continent by the strait of Fuca. His voyage is referred by Lord Clarendon to the year 1792. It was, in fact, made in 1778, fourteen years before the Columbia river was entered or even certainly known to exist. Ten years after Cook's voyage to the coast, Meares, on whose explorations the British government partially rests its title, reported he could say with certainty, no such river as the St. Roe (the Columbia) existed. Four years later still, Vancouver, after a most careful examination of the coast, came to the same conclusion, as we have seen. Sir, Lord Clarendon evidently confounded the voyage of Cook with that of Vancouver, without an accurate reference to either.

3. It is equally erroneous to say, that the northwest company explored the country in 1813, and established themselves in Port St. George. Explorations had been made, first by Lewis and Clarke, mili-

tary officers in the service of the United States, and then by Thompson and others, in the service of the British and American fur companies. But no particular explorations, I believe, were made in the year referred to. The stock and property of the American company at Astoria were sold to the Northwest company in that year; but the place was restored to the United States in 1818, and no attempt was made by the government of Great Britain to extend its laws over any part of the territory until 1821, eight years after the time at which Lord Clarendon represents Astoria as being under the government of British laws, having the character of a national establishment of Great Britain, and recognised as such by foreign nations. Sir, it has never possessed such a national character, or been so recognised. If his lordship had taken the trouble to look at the statement of the British commissioners, (Messrs. Huskisson and Addington,) in 1826, he would have found they distinctly denied that it was "a national possession" or "a military post" in the hands of the Americans; and they endeavored to show by argument that it was not such in the hands of the Northwest Company after its purchase. Its restoration to us in 1818 is in compatible with the assumption that it has such a national character now. The assumption is equally inconsistent with the conditions of the treaties between Great Britain and the United States, which virtually preclude such an exclusive exercise of sovereignty on her part as to give any establishments made by her subjects a character of nationality. Nay, sir, it is inconsistent with the claims of Great Britain herself, whose commissioners in 1826 expressly renounced all pretensions to a right of exclusive sovereignty over any portion of the Oregon territory. It is difficult to fancy a paragraph of as many words so replete with error as the one on which I am commenting.

I regret to say that the subject was presented to the House of Commons with, if possible, still greater misrepresentations, and from an equally distinguished source; though I might not have felt myself called on to notice them, but for their connexion with the incidents I have been examining, and particularly the question of title.

The subject was introduced into the House of Commons by Lord John Russell, much in the same manner as it was presented to the House of Lords—not in the shape of a call for information, but in the nature of a protest against some of the positions taken by the President in his inaugural speech. This gentleman is a distinguished member of the whig party, a member of a former ministry, and was recently called on by her majesty to form another, but did not succeed. I will now read to the Senate that part of his lordship's remarks which relates to the discovery of the Columbia river, one of the principal historical facts on which the United States rest their claim to the Oregon territory:

"Now, it appears that Captain Vancouver was sent out by the British government to discover the line of coast, and to take possession of certain parts laid down in his instructions; and here we come to another part of the claims of the United States—to a part of their claims where they put in their claim to discovery upon a transaction which I will now proceed to relate. It appears that a merchant vessel called the Columbia, under a Captain Gray, discovered an inlet, which was supposed to be an inlet of a river. It appears that after some days in the month of May, 1792, passed partly at anchor and partly in endeavoring to ascertain the limits of that bay, that this vessel sailed out again into the Pacific ocean. There is a very clear account given by Captain Gray, the commander of that vessel, that 'after some days,' he says, 'we thought we had found a channel, we found we were mistaken. There is no channel in the part which we endeavored to penetrate, and therefore we

must return.' Shortly after this, Captain Vancouver arrived on the coast. He not only went into the same inlet, but he sent his lieutenant—a Lieutenant Broughton—to discover the river, and to go in a boat to a distance up the river. Lieutenant Broughton was more successful than Captain Gray. He actually discovered the entrance of the Columbia river. He went up it in his boat, several days, to the distance, I think, of some 90 or 100 miles. He discovered the territory surrounding it. It was agreed that the river should be called by the name of Columbia, and Lieutenant Broughton returned to his ship. But Captain Vancouver took possession of that river, the coast adjacent, and the Nootka sound, in the name of his majesty the king of England. (Hear, hear.) Then, sir, there was something of valid title."

I confess it was with equal regret and surprise that I read this statement of a transaction which has become matter of history, and in respect to the facts of which there is no reasonable ground for serious misconception. I have looked in vain for the quotation Lord John Russell professes to make from Captain Gray. There is no such statement in the only account which I have seen given by the latter of the discovery of the Columbia river—the certified copy of his log in the State Department. His lordship goes on to state that Vancouver shortly after arrived on the coast, and not only went into the inlet, but sent in Lieutenant Broughton, "who actually discovered the entrance to the Columbia river." Now, the Senate will observe that, in order to sustain this most unauthorized assumption, almost all the important facts relating to the discovery of the Columbia river—facts shown by Vancouver's own journal—are kept out of view:—the meeting of Gray with Vancouver on the 29th April, 1792, five months previously, near the strait of Fuca; the information given by Gray to the latter of the discovery of the river, and of his unsuccessful attempts to enter it; the incredulity of Vancouver, and his continued conviction that no such river existed; the return of Gray to the river, his success in entering it, the arrival of Vancouver at Nootka where he obtained copies of Gray's charts left with Quadra, by the aid of which Vancouver, was enabled to find the stream, and send up his lieutenant, Broughton, to explore it. I say, sir, all these material facts are suppressed—I trust not intentionally—to sustain the unfounded assumption that Broughton was the discoverer of the Columbia. But it is worthy of remark that Mr. Falconer, a respectable British writer, who has recently published a pamphlet on Oregon, and who wrote about the time Lord John Russell spoke, admits that Gray was the first person who noticed the Columbia river after Heceta, and concedes the discovery to the latter. Happily, the historical facts are too well authenticated to be permanently misunderstood. They were so well known at the time, that even the rivalry—not to say the detraction—of the day conceded to Gray the merit of the discovery by designating the river by the name he gave it—the name of the vessel that first entered its waters. In regard to the attempt to restrict Gray's discovery to the bay or mouth of the river, it is only necessary to say that the settlement at Astoria is universally admitted to be on the Columbia river. Is it not so, sir? It is designated "the settlement on the Columbia river," in the despatch of Earl Bathurst directing it to be restored to us in 1818, as well as in the act of restoration. Now, sir, Capt. Gray ascended the river not only as high as Astoria, which is ten miles from the Pacific ocean, but at least six miles above it according to Broughton himself. Look at the map of Oregon on your table, by Capt. Wilkes, and you will find Gray's bay, so named by Broughton, (see Vancouver's journal, vol. 3, page 92,) on the north side of the Columbia and higher up than Astoria. According to Gray's own log, he anchored the day

he discovered and entered the river, ten miles above the entrance, and three days after he sailed twelve or fifteen miles higher up. He must, therefore, have been from six to fifteen miles above the site of the settlement at Astoria. What, then, becomes of the attempt of Broughton, revived by British statesmen, not negotiators, (no negotiator at this day would so risk his reputation,) to restrict Gray's discovery to the mouth of the stream?

Lord John Russell's statement is equally erroneous in other particulars—erroneous in saying that Vancouver entered the Columbia, or the inlet—erroneous in saying that he took possession of Nootka sound. His vessel, the Discovery, did not pass the bar at the mouth of the Columbia river; he did not take possession of Nootka; Quadra refused to make a formal surrender of anything but Meares's cove, which he would not accept; and the formality of taking possession of the Columbia river was performed by Broughton, after Vancouver had left the coast, much in the same way as it had been done ten years before by the Spaniards, who were the first discoverers and explorers of the country. I repeat, and I say it with regret, that besides the errors in point of fact, the leading and material circumstances connected with the discovery of the Columbia river are kept out of view. I do not expect British statesmen to produce arguments in favor of the American title; but when they undertake to refer to historical facts resting on their own authorities, and in their own possession, they are bound to state them with accuracy. Sir, we may excuse illogical deductions from admitted data; we may look with indulgence on differences of opinion in regard to the same facts, knowing, as we do, our liability to be biased by prejudice or by too partial views of personal or national interest. But for an omission of essential circumstances in the discussion of an important national question, a discussion entered upon voluntarily for the purpose of enlightening the public mind of a nation, there can be no apology, even though it arise from want of a sufficiently careful examination of the subject. On the Oregon question it is well known that great excitement existed at the time in Great Britain and the United States—an excitement which exists still, though happily somewhat abated—an excitement which needs, perhaps, but little provocation to break out into open hostility; and no man who appreciates, as he ought, the calamity of an interruption of the amicable relations which exist between us, should be willing to incur the responsibility of misleading the public judgment of either country; or, if he does misdirect it, he should at least have the consolation of reflecting that it was through erroneous deductions, and not a misstatement of facts fairly within his knowledge.

The misrepresentations to which I have alluded are the more to be regretted, for the reason, if I do not err, that they constitute almost the only views of the subject which reach the great mass of the British people. In this country, statements of both sides of great national questions are equally confused. Look at our newspapers, and they will be found filled with the diplomatic correspondence between the British and American plenipotentiaries. The letters of Mr. Packenham are published with those of Mr. Calhoun and Mr. Buchanan, and are as widely circulated. All read, compare, and judge them. It is not so in Great Britain. As a general rule, the British side of the question only is presented to the British public. Nor is it the official argument of the government, drawn up by the diplomatist, under a sense of his

responsibility to the criticism of other nations, and the general judgment of mankind. No, sir! It is more frequently the "tirade" of the politician, by which the public mind of Great Britain is made to pronounce judgment upon great questions of international right and duty.

These misrepresentations are still more to be regretted, because they constitute the basis of the statements which find their way to the continent. Through Galignani's Messenger, the echo of the British press, they are translated into French, and widely circulated, poisoning the whole public mind of the continent, and exciting prejudice against us.

I will only add, that the Earl of Aberdeen in one house, and Sir Robert Peel in the other, adverted to these statements in a manner which, though not altogether unexceptionable, was in general dignified and statesmanlike; and it is earnestly to be hoped that the better feeling which now exists between the two countries may continue unabated, and lead to a settlement of the question on terms honorable to both.

I feel that I owe an apology to the Senate for this long digression. I trust it will be found in the consideration that the inaccuracies I have endeavored to point out, did not go to the world with the mere weight of an ordinary legislative debate, but with all the evidences of deliberation and arrangement; and, therefore, calculated to be more dangerous in propagating error.

It was now three o'clock, and Mr. D. gave way to a motion of Mr. SEVIER to adjourn.

THURSDAY, February 19, 1846.

Mr. DIX was about to resume his remarks which he had not concluded at the hour of adjournment yesterday, but yielded the floor to

Mr. J. M. CLAYTON, who said he desired an opportunity to offer a few remarks relative to an allusion made to him by the senator from New York, [Mr. Dix,] in the opening of his speech yesterday. He is reported to have said :

"In entering into the debate on the question under consideration, I feel constrained to differ in opinion with two distinguished senators who have preceded me, in relation to the manner in which the discussion should be conducted. I allude to the senator from Ohio, [Mr. ALLEN] who opened the debate, and the senator from Delaware, [Mr. CLAYTON] who followed him. Both took the ground, and with equally strong language, that the title to Oregon ought not to be drawn into this discussion, but for totally different reasons—the senator from Ohio, because the time for discussing it had gone by, and the senator from Delaware, because the time for discussing it had not arrived. With the unfeigned respect which I entertain for both senators, I dissent from their opinions with great diffidence of my own."

As the senator said, he (Mr. C.) was temporarily absent from his seat, but came in a few minutes after the senator had made that remark. He had mistaken his (Mr. C.'s) position. When he had the honor of addressing the Senate on the 12th inst., he did object to the discussion of the title in open session, but he avowed distinctly at the time his perfect willingness to enter at any moment on that discussion in executive session. He did not mean to say, nor did he think that he was generally understood at the time as meaning to say, that he objected to the discussion of the question at that very moment. On the contrary, he thought that he expressed his willingness to go into it then, if his associates in the Senate wished to do so—but in executive session. And he begged the senator to recollect the reason which he assigned why the discussion should be so conducted. He said, that, if the question were to be settled by treaty between the two governments, the remarks made in open session were calculated to prejudice, and must necessarily prejudice, the

question which would arise upon the treaty. He thought then, and he thought so still, that if the question were to be settled in that manner, great danger might arise from these public discussions, because it would be recollected that it took but nineteen of them to defeat any treaty; and if the discussion became extended, as was very likely, there was danger that nineteen senators might become so committed before the whole country in regard to the title, and differing from the Executive, why, then, was it not obvious that their consideration of the treaty would be seriously trammeled? On the other hand, he thought then, and thought still, that if discussed in executive session, no such difficulty could occur; no man would be then committed before the country. But open discussion was attended with the danger of so many men committing themselves on some parallel of latitude different from that presented in the treaty.

Mr. DIX then proceeded with his remarks, and said:

I beg the senator from Delaware to be assured that nothing would give me more pain than to misstate any senator on this floor; and I accept with great pleasure the explanation which he has made. I desire also to say, in justice to him, as well as to the senator from Ohio, that I did not use the term "peremptoriness" in referring to the manner in which they had insisted that the question of title ought not, in their opinion, to be discussed. I said they had taken the position in equally strong language.

I now resume the consideration of the important question on which I had the honor to address the Senate yesterday; and in doing so, I cannot withhold the expression of my sense of the kind indulgence which has been extended to me. I will endeavor to afford the Senate a substantial proof of that sense of obligation on my part, by bringing my remarks to a close in the briefest possible period of time.

The historical sketch which I was making when the Senate adjourned of the discoveries and establishments in Oregon yesterday, ended with the year 1792.

The discovery of Bulfinch's harbor and the Columbia river by Gray, and the explorations of Galiano, Valdes, and Vancouver, in the strait of Fuca, in that year, terminated the series of maritime discoveries in the disputed territory, which had commenced two centuries and a half before. From that time to the present, nothing has been done on the coast but to fill up the smaller details of the great outline completed by the labors of these navigators.

In the same year, (1792,) Mackenzie, leaving Fort Chippewyan, on the Athabasca lake, in the 58th parallel of latitude, and nearly midway between the Atlantic and Pacific oceans, proceeded westward to the Rocky mountains, where he passed the winter. The next spring he resumed his journey, struck the Tacoutche Tessée, in the 54th parallel of latitude, (now Frazer's river,) and descended it some 250 miles. He then continued his course to the west, and reached the Pacific in north latitude 52° 20'—about a degree north of the island of Quadra and Vancouver. Frazer's river, which takes its rise near the 55th parallel of latitude, was for nineteen years supposed to be the northern branch of the Columbia; but in 1812 it was ascertained by Frazer to debouche in the strait of Fuca, at the 49th parallel of latitude. It waters the district of country immediately west and north of the valley drained by the upper branch of the Columbia. This district is a part of the great section of the northwest coast bounded on the east by the Rocky mountains, and on the west by the Pacific, of which the main chan-

nels of access had been laid open by previous discoveries.

In 1804, Captains Lewis and Clarke set out on their expedition to Oregon; and in 1805, after incredible hardships and labors, they established themselves on the north side of the Columbia river, near its mouth, and subsequently on the south side, and passed the winter there. In the spring of 1806, they commenced their journey homeward, and reached the Mississippi in the fall of that year, having travelled over 9,000 miles. This expedition was fitted out under the direction of the government of the United States, and executed by officers in its service at the public expense. It was undertaken on the recommendation of the President, communicated in a message to Congress in 1803. One of its objects was to examine the country watered by the Columbia river, which had been discovered by a citizen of the United States; and it resulted in a survey—necessarily cursory—of the main southern branch of the river, of the principal stream to its mouth from the junction of the latter with it, and of a portion of Clarke's river, which empties into the northern branch between the 48th and 49th parallels of latitude. This was the first exploration of the Columbia made subsequently to 1792, when it was ascended by Gray, its discoverer, some twenty miles, and five months after by a detachment from Vancouver's party, under Broughton, about one hundred miles from its mouth.

It is also to be considered that the expedition of Lewis and Clarke was undertaken immediately after the cession of the territory of Louisiana to the United States by France—a territory admitted to include all the country drained by the Mississippi and its tributaries to their head waters. It was also the understanding at the time that it was separated from the British possessions in North America by the 49th parallel of latitude extended westward from the Lake of the Woods indefinitely. Mr. Monroe in a paper presented to Lord Harrowby in 1804, at London, stated that it had been so settled by commissioners appointed by France and England under the treaty of Utrecht; and the statement was not impugned or objected to. I am aware that a doubt exists whether such a line was agreed on; but after nearly a century and a half, it is questionable whether an arrangement which had been acquiesced in [Col. BENTON here added—and acted on] as having been made by the competent authority at the proper time, can be denied even though no authentic record of the meeting of the commissioners can be found.\* Other persons were employed by the government to survey the southern portions of Louisiana, and these contemporaneous expeditions must be regarded by the world as a public manifestation of the intention of the United States to assert all the rights she might justly claim by discovery or otherwise to the sovereignty of the country between the Mississippi and the Pacific ocean.

In 1806 Mr. Frazer, an agent of the Northwest Company, formed an establishment on Frazer's lake in the 54th parallel of latitude; and this was the first establishment ever made by British subjects west of the Rocky mountains.

In March, 1811, the Pacific Fur Company, of which John Jacob Astor of N. York was the principal, formed an establishment at Astoria, on the south bank of the Columbia river, about ten miles from its mouth, having first established themselves on the north

\*See an elaborate examination of this question in Greenhow's Oregon, page 276.

bank; and this was the first settlement ever made on the Columbia or in the territory watered by that river or its tributaries, excepting two temporary establishments in 1809 and 1810, formed also by American citizens, which were soon abandoned in consequence of the difficulty of obtaining provisions and other embarrassments. The Astoria company also formed an establishment in 1811, on the Okanagan, a tributary entering the Columbia on the north side, between the 48th and the 49th parallels of latitude; and in 1812 another near it on the Spokane, also a tributary of the great river.

In 1813 the Pacific Company, in consequence of the embarrassments growing out of the war of 1812 with Great Britain, sold "its establishments, furs, and stock in hand" (including the posts on the Okanagan and the "Spokane") to the Northwest Company; and a few days afterwards the British sloop-of-war Raccoon arrived, took possession of the place, and hoisted the British flag.

By the treaty of Ghent, ratified by us in 1815, it was stipulated that "all territory, places, and possessions whatsoever taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay."

In compliance with this stipulation the establishment at Astoria was restored to the United States. The compliance was full, unconditional, and without reservation of any sort. No claim was set up by Great Britain in her written communications with the United States on this subject, at the time of the restoration, in respect to any right of sovereignty or domain in the territory thus restored. The British minister at Washington had, it is true, a year before objected to the restoration on the ground that the place had been purchased by the Northwest Company, and that it had "been taken possession of in his majesty's name, and had been since considered as forming part of his majesty's dominions." The objection was virtually abandoned by the restoration; and as the place was restored without a written protest or reservation, the ground of the objection may be regarded as having been considered wholly untenable by those who took it. In this transaction, as in all others relating to the territory of Oregon, the government of the United States maintained in clear and unequivocal terms its right of sovereignty. In its instructions to Capt. Biddle in 1817, it directed him to proceed to the mouth of the Columbia, and there "to assert the claim of the United States to the sovereignty of the adjacent country, in a friendly and peaceable manner, and without the employment of force." This order he executed on the 9th of August, 1818, by taking formal possession of the country on the river. The formal restoration of Astoria was made on the 6th of October, 1818; and in fourteen days afterwards (on the 20th October) a convention was agreed on by the United States and Great Britain, containing the following article:

"Art. 3. It is agreed that any country that may be claimed by either party on the northwest coast of America, westward of the Stony mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two powers: it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of said country, nor shall it be taken to affect the claims of any other power or State to any part of the said country, the only object of the high contracting parties, in that respect, being to prevent disputes and differences among themselves."

On the 6th of August, 1827, the main provisions

of the foregoing article were renewed by the following convention.

"Art. 1. All the provisions of the third article of the convention concluded between the United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, on the 20th of October, 1818, shall be, and they are hereby, further indefinitely extended and continued in force, in the same manner as if all the provisions of the said article were herein specifically recited.

"Art. 2. It shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the 20th October, 1828, or giving due notice of twelve months to the other contracting party, to annul and abrogate this convention; and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice.

"Art. 3. Nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impugn, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky mountains."

On the basis of these two treaties the relations of the two countries in respect to Oregon now rest; and in order to ascertain what are the rights of the contracting parties to the territory in dispute we must revert to the year 1818, to the *status quo* before they were entered into; for if, as has been seen, nothing contained in the treaties can prejudice in any manner their respective claims, no acts done since by settlement or otherwise can create, in respect to the territory in question, any rights which did not exist then.

This position was taken with characteristic vigor and brevity by the distinguished senator from South Carolina [Mr. CALHOUN] sitting before me, in a note dated the 3d of September, 1844, and addressed to Mr. Pakenham, while the senator was acting in the capacity of a negotiator.

Sir, I wish to be distinctly understood on this point, for the reason that the Hudson's Bay Company, in which the Northwest Company has been merged, has for several years been extending its establishments, and because, in the negotiations between the British government and ours, it has been once, at least, if not more than once, intimated by the former that British subjects had interests there which it was bound to protect. These establishments have been made with full knowledge of the stipulations of the conventions entered into between the two countries; and on no ground, even the ground of equity, can any claim be set up on the basis of these newly-created interests. To agree to suspend the settlement of the controversy, and then to draw from acts done by one of the parties during the suspension new arguments in favor of its own side of the question, is not only repugnant to every rule of fairness, but it is a violation of the letter as well as the spirit of the agreement, and tends to the defeat of the very object in view in making it.

Let us see, then, what discoveries had been made, and what establishments formed, in 1818. Those of Spain were paramount to all others. She had visited and explored the whole coast from California, where she had permanent establishments, to the most northerly line of the territory in dispute. She had discovered the strait of Juan de Fuca, and formed an establishment within it I think in 1790. She had discovered Nootka sound, and established herself there. And she was strengthened in her claims to the absolute sovereignty of the country by its immediate contiguity to California, of which she had the undisputed and undivided possession, with the exception of two temporary establishments by the Russians between the bay of St. Francisco and Cape Mendocino, which were made to facilitate

their trade in furs, and by permission of the Spanish government. It is true she had not kept up her establishments north of Cape Mendocino; but no others had been formed in the same localities; and her rights of discovery, therefore, were not superseded by rights of occupation on the part of other nations in any portion of the territory in dispute, excepting so far as they may have been derived from the American and British establishments, to which I am about to refer.

The United States had discovered the Columbia river, and ascended it at the time of the discovery to the distance of twenty-five miles from its mouth. She had also discovered Balfinch's harbor, between the Columbia and the strait of Fuca. She had examined the country watered by the Columbia and some of its tributaries, and she had formed establishments within it at four different periods—in 1809, 1810, 1811, and 1812—the most southerly near the mouth of the Columbia, and the most northerly between the 48th and 49th parallels of latitude. Spain claimed to have discovered the Columbia seventeen years before Gray entered it; but in 1821 she ceded all her rights to the country north of  $42^{\circ}$  to the United States, by treaty, and thus gave us a title to the territory watered by the river which Great Britain ought never to have questioned. By virtue of the same act of cession her entire right to the coast became vested in us.

In the course of the public discussions in respect to Oregon, the United States has been charged with dishonor and bad faith in setting up a claim to that territory, 1st, by discovery, through the agency of her own citizens; and 2d, by cession of the rights of Spain. For, as has been said, if the first ground was tenable, she could not, without inconsistency, set up a claim on the second, because she had virtually denied the second by assuming the first as the basis of her right. But, sir, is it not quite possible for two nations to possess rights by contiguity, or to acquire them by discovery, neither perfect, but capable of being rendered so by a merger of both in one? Great Britain herself claims a right of joint occupancy with the United States in Oregon; and she will certainly not deny that a cession of her right to us; or ours to her, would create a perfect title to the country, without affording cause for any imputation of dishonor to either.

Great Britain in 1818 had surveyed the strait of Fuca, after its outlines were known, but she had made no discoveries on the coast which were not comprehended within the boundaries of the great districts previously known and visited. She may have had establishments in the valley of the Columbia; but if so I have not been able to ascertain the fact. She had discovered Frazer's river, which empties into the strait of Fuca at the 49th parallel of latitude; she had traced it from its source to its mouth; she had formed an establishment on it near the 54th parallel; and it only remains to settle by the testimony of facts the geographical relation which this river and its valley bear to the river and valley of the Columbia.

I pass by, as unconnected with the question, for the reasons I have assigned, all settlements made subsequently to 1818 by the Hudson's Bay Company, on which Great Britain has conferred large and most important powers in respect to the country west of the Rocky mountains. Indeed, these establishments rest upon no legal concession, even by herself, which confers any right of domain. The Hudson's Bay

Company has a mere right of exclusive trade with the Indians, without the privilege of acquiring any title to the soil in Oregon; and in this respect the privileges of the company differ materially from those conferred on it in relation to the territory it possesses upon Hudson's straits.

I also pass by as idle the formalities of taking possession of the country by Broughton on the Columbia, and Vancouver in the strait of Fuca—for formalities a long time before performed in numberless localities by the Spaniards—especially as those of the British navigators were unaccompanied by actual settlement and occupation, and were in direct violation of a treaty which those officers were sent out to execute."

I have endeavored, Mr. President, in the first part of my remarks to maintain the Spanish title to the northwest coast of America. I regard all attempts to disparage it as antiquated and obsolete, to be founded upon partial and illiberal views of the subject. It is unnecessary to say to you, sir, or the Senate, that antiquity is the highest element of title, if the chain can be traced down unbroken and entire to our own times. The Spanish title to the northwest coast is almost coeval with the voyages of Columbus. It is consecrated by discovery as high as the 43d parallel of latitude, by the lapse of more than three centuries, as high as the 48th by the lapse of two centuries and a half, and as high as the 54th by the lapse of more than seventy years. Sixty years ago it stood undisputed and unimpeached by any antagonist claim or pretension to territorial rights. It was confirmed and perfected by occupation as high as  $49^{\circ} 30' \text{ half a century ago}$ . During the succeeding twenty years, it was not superseded by rights of occupation on the part of other nations, unless it be to the limited extent I have stated. During the last thirty years, all rights have been suspended by treaty arrangements between the only two powers who can, with any face, set up a claim to the exercise of sovereignty over the territory to which it attaches. In the consideration of national interests in territorial possessions, it is a narrow view to bind down sovereign states to all the rigorous technicalities of private tenures. Great principles of national right, viewed liberally, and applied according to the proclaimed intentions of the parties, are the only guides worthy of statesmen or governments in the settlement of questions of sovereignty over the unoccupied portions of the earth we inhabit. The object of Spain in respect to the northwest coast was settlement—permanent occupation. The object of Great Britain was commerce, traffic, transient occupation. Tested by the principles I have stated, I cannot hesitate to consider the Spanish title to the northwest coast of America, which has of late been so much disparaged, as vesting rights in us which are unimpeachable.

I said at the commencement of my remarks that one of my objects was to defend the Spanish title, by stating the historical facts on which it rests. I have performed the task which I allotted to myself. I will only add, that with what I have said, I am content, so far as I am concerned, to leave the whole question where it now is, in the hands of the administration, relying on its firmness and its sense of rectitude to sustain our just rights, and to respect the just rights of others.

So conscious is Great Britain of the invalidity of her title that she does not venture to assert a right to the exclusive sovereignty of any portion of the territory. In 1826 she claimed only a right of joint occu-

pancy in common with other powers, but denied the right of exclusive dominion in the United States. While insisting that she was entitled "to place her claims at least upon a parity with those of the United States," she has constantly refused to divide the territory at the 49th parallel of latitude, the boundary between her and us from the Lake of the Woods to the Rocky mountains—a line which would have severed the coast, and the country in immediate contiguity with it, into two parts so nearly equal as to leave her no reasonable ground, even on the score of an equitable division, for the continuance of a controversy. Her desire for territorial extension in this quarter is for the purpose of establishing her colonial dominion over districts of country bordering on us and confining our settlements within narrower limits. Our contest for territorial rights, which we consider indisputable, has no object but to enable our citizens to extend themselves to our natural boundary—the Pacific. Her interest is remote and contingent. Ours is direct and certain. Hers is the interest of a state in a distant country which she wishes to colonize. Ours is the interest of a country in its own proper territory and settlements. She is not content with subjecting to her sway the fertile and opulent regions of the East; but she comes now thousands of miles across the ocean to dispute with us the dominion of the uninhabited wilderness, and curtail the area for our expansion. With the least disposition on her part to listen to the suggestions of reason and justice, this question would long ago have been settled on the fair and honorable terms of compromise—nay, sir, on the terms of concession, which we have more than once proposed.

I am sure that in the course of our government in relation to Great Britain, in our negotiations, and in the treaties which have been formed between us, no evidence will be found of a desire on our part to encroach on her rights, or to adjust any of the questions which have arisen between us on other terms than those of justice and liberality. The settlement of the northeastern boundary—one of the most delicate and difficult that has ever arisen between us—affords a striking evidence of our desire to maintain with her the most friendly understanding. We ceded to her a portion of territory which she deemed of vital importance as a means of military communication between the Canadas and her Atlantic provinces, and which will give her a great advantage in a contest with us. The measure was sustained by the constituted authorities of the country, and I have no desire or intention to call its wisdom in question. But it proves that we were not unwilling to afford Great Britain any facility she required for consolidating her North American possessions—acting in peace as though war was not to be expected between the two countries. If we had cherished any ambitious designs in respect to them—if we had had any other wish than that of continuing on terms of amity with her and them—this great military advantage would never have been conceded to her.

On the other hand, I regret to say that her course towards us has been a course of perpetual encroachment. But, sir, I will not look back upon what is past for the purpose of reviving disturbing recollections. Yet I am constrained to say, that in respect to Oregon, I consider her legislation as a virtual infraction of the conventions of 1818 and 1827. By an act of Parliament passed in 1821, she has extended the jurisdiction, power, and authority of her courts of judicature in Upper Canada over the whole Indian territory in North America, "not within her own prov-

inces, or within any civil government of the United States," and of course embracing the territory of Oregon. She has given them cognizance of every wrong and injury to the person and to property, real or personal, committed within the territory, and has declared that every person whatsoever (not British subjects alone, but every person whatsoever) residing in it shall be amenable to these courts. Nay, sir, she has authorized the crown to establish courts within the territory itself with power to try criminal offences not punishable with death, and also civil causes to a limited amount—I believe £200—about \$1,000. She has thus assumed to exercise over this territory one of the highest attributes of national sovereignty—that of deciding upon rights of property and punishing violations of the criminal laws she has extended over them. She could hardly have asserted a more absolute sovereignty than she has done by this extension of her laws and the jurisdiction of her courts over a territory in which she admits that she has no other right but that of a joint occupancy. I am aware that she has disavowed the intention of enforcing her criminal laws against citizens of the United States. But if senators will turn to the documents accompanying the President's message, they will see that the Hudson's Bay Company has a much more summary method of disposing of American citizens, who establish themselves on the north side of the Columbia, in the neighborhood of its settlements. Their condition is not bettered, if this exemption from the operation of the British statute is to be exchanged for a forcible process of eviction without law.

Under these circumstances, what is the duty of the United States? As I do not intend to intrude myself on the attention of the Senate again, without absolute necessity, on any question relating to Oregon, I desire to say now that I shall vote for the notice to terminate the convention of 1818, continued in force by that of 1827—a convention which Great Britain treats as recognizing a right of joint occupancy, but which has in reality been for her an exclusive occupancy of the whole territory north of the Columbia. I am in favor of extending the authority of our laws and the jurisdiction of our courts over the territory; and in doing so, I would, while the convention continues, specially except British subjects, and direct them, when charged with infractions of our laws, to be delivered up to the nearest British authorities. I would make this reservation for the express purpose of preventing, as far as possible, a conflict of jurisdiction, and to avoid all cause for imputing to us a disregard of treaties, or a desire to produce collision or disagreement of any sort. And in order to facilitate the extension of the authority of the Union over our fellow-citizens in that remote district of our country, and to remove, as far as possible, the obstacles to a more free and efficient intercourse between us and them, I would establish at once a chain of military posts, with competent garrisons and armaments, from the remotest navigable waters which flow into the Mississippi, to the eastern face of the Rocky mountains, stopping there so long as the convention continues in force. Duty, honor, policy—all demand these measures at our hands; and I trust they will be executed with promptitude and decision.

Will these measures produce war? I cannot believe that they will. I cannot believe it, because they furnish no just ground of provocation. The right to give the notice is reserved by treaty. The right of extending our laws over Oregon is a right

which Great Britain has already exercised for a quarter of a century. The establishment of a chain of posts to the Rocky mountains wholly within our own territory, invades no right in others. It has been inferred, from an expression in a public document, that there is danger of immediate war, and that a sudden blow may be struck. Sir, I do not believe it. A war waged against us on account of any one or all of the measures referred to, would be a war of plain, unmixed aggression. No nation, in the present age, could embark in such a contest, without drawing down upon herself the condemnation of all civilized communities. She would find herself opposed and restrained by public opinion, which, in our day, rules the conduct of nations more powerfully than the arm of force. I hold, therefore, immediate war to be out of the question. Nor can eventual war take place, unless the assertion of our just rights shall be forcibly resisted. I do not pretend to pass judgment on what the future may bring forth. Collisions may grow out of these measures—collisions ripening, through influences and events which we may be unable to control, into open warfare. I should deeply deplore such a result. The interests of humanity, great principles of political right, self-government, freedom, individual rights, all suffer when the voice of the law is silenced by the tumult of war. *"Inter arma silent leges,"* is an adage, of the truth of which history has furnished too many fatal proofs. I would do much to avert such a calamity. I would do anything not inconsistent with the public honor, to avoid a contest which would be disastrous to both parties, no matter what should be its final issue. But beyond this I can never go. And if exemption from war can only be purchased by a surrender of our just rights, I cannot consent to make the purchase. But if war cannot be averted, I trust we shall not commit the great error of undervaluing our adversary. With some opportunity of observing the condition of Great Britain near at hand, I have no hesitation in saying that she was never capable of greater efforts than she is at the present moment. I know that her inordinate distension contains within itself an element of vital weakness. It is not in the order of human society that so extended a dominion should remain long unbroken. But I have not yet been able to detect, in the condition of her body politic, the unerring symptoms of that decay which precedes and works out the dissolution of empires. She has great abuses to struggle against. The senator from Ohio has well and graphically described them. She has enormous burdens to sus-

tain; but she has great strength to bear them. Her soldiers are not like those of Rome in her latter days, enervated in vigor and relaxed in discipline. You will find them in every quarter of the globe, under the fiery heat of the equator, and amid the frosts of the arctic circle, braving the elements, and setting danger and toil, in every form, at defiance. But, sir, I pretend not, with my narrow foresight, to look into the future. It is possible that her hour may be near at hand. But we know that the last struggle of the strong man is always the most desperate, and sometimes the most dangerous to the antagonist, who has brought him to the ground.

I say this in no spirit of timidity. I say it in a spirit of prudent forecast—with the desire that we may go into the contest, if it shall come, with the assurance that we have to deal with a strong adversary and not a weak one; and that our preparation may be commensurate with the means of offence to which we shall be exposed. I have no doubt of our ability both to defend ourselves, and to give back effective blows in return. We were never so strong as we are at the present moment—strong in our position, strong in our means, strong in the spirit and energy of our people. Our defenceless condition has been greatly overstated. We have been told that our coast is denuded. I have heard, whether on this floor or elsewhere, that I do not know, that there is scarcely a gun mounted for the defence of the commercial metropolis of my own State. There cannot be a greater error. There are hundreds of guns, of heavy calibre, in the city of New York, ready, at the very hour in which I speak, to receive an assailant, and as many more, which can be placed in position in an emergency—and this independently of guns afloat. In thirty days I believe the city might be rendered, with a skilful engineer, and with the means which might be placed at his command, prepared—well prepared—against a maritime assault. But, sir, I turn away from all these forebodings of evil. I have confidence in the continuance of peace. The good sense of both countries will revolt at a contest which can bring no good to either, and secure an adjustment of existing difficulties on terms honorable to both. Such is my conviction. But, sir, if I am deceived, then I have only to say, that while I would be constrained by nothing but overruling necessity to take up the sword, yet if the necessity shall come, I trust we shall never consent to lay it down until the rights and the honor of the country have been fully vindicated.

When Mr. Dix resumed his seat,

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